Michigan
Campaign Finance
Network

To: Michigan House Committee on Ethics and Elections

From: Rich Robinson, Michigan Campaign Finance Network

RE: House Bills 6182, 6183, 6184, 6185, 6186, 6187, 6188

Date: May 26, 2010

Madam Chair and Members of the Committee:

I am submitting this memorandum to supplement my oral testimony to the Committee on Ethics and Elections from May 19, 2010.

I respectfully request a modification to HB 6182. As it is written, the bill would narrow the definition of a campaign expenditure from that which is in the Michigan Campaign Finance Act, section 6(2)(b), and decrease that which is subject to disclosure, counter to the stated goals of this package of bills. By striking the words "advocating the election or defeat of a candidate," in lines 3 and 4, HB 6182 would cover corporate campaign expenditures the same as others' expenditures, neither more broadly nor more narrowly.

While independent expenditures are the issue at hand, I recommend that the Committee take this opportunity to address the issue of **coordination** between independent spenders and candidate committees. Section(9)(2) of the MCFA defines an independent expenditure as an expenditure that is "not made at the direction of, or under the control of, another person." That is a weak standard. In federal campaign finance law, coordination between an independent spender and a candidate committee is strictly prohibited. Coordination should be prohibited in Michigan law as well.

HB 6183 requires corporate independent expenditures to be reported five days before they are executed. That would make at least four different standards for timing of disclosure of independent expenditures in the Michigan Campaign Finance Act. Individuals who make independent expenditures must report within 10 days. Such expenditures by committees must be reported within 48 hours when they occur in a special election. They are reported in the next scheduled report when they occur in a regularly scheduled election campaign, which may be as much as six months after a municipal or county election. For the sake of coherence in our law, I recommend a uniform standard: Require *all* independent expenditures to be reported within 48 hours.

Finally, as I testified on May 19th, this package of bills would fail to require any disclosure of candidate-focused issue ads, a phenomenon of electioneering that I have documented to be at least a $45 million issue over the past decade.

Most of the spending in the 2008 Michigan Supreme Court campaign was for candidate-focused issue advertising of the type that sought to define the qualifications of the candidates while carefully avoiding words we understand to be instruments of 'express advocacy,' such as "vote for," "vote against," "elect" or "defeat." Consequently, over half the money spent in that campaign was off the books. Over the decade of Michigan Supreme Court campaigns from 2000 to 2008, the candidates, themselves, have raised and spent less than what was spent by the Michigan Chamber of Commerce, the Michigan Democratic Party and the Michigan Republican Party for candidate focused issue ads that were not disclosed anywhere in Michigan's reporting system.

The loophole you ignore with this package of bills turns a blind eye to undisclosed campaign spending of the type that exceeds the campaign of record for many of this state's most contentious elections.

This deficiency can be corrected easily. You should include a new definition in the Michigan Campaign Finance Act: **"Electioneering Communication" means any broadcast or cable advertisement that features the name or image of a candidate for office within 90 days before an election involving that candidate.** Electioneering communications should be subject to the exact same disclosure rules as independent expenditures.

In Part IV of its decision in the case of *Citizens United v. Federal Election Commission*, the U.S. Supreme Court established a rock-solid foundation for you to regulate electioneering communications. The plaintiff, the nonprofit advocacy organization, Citizens United, plead that disclosure should be limited to the functional equivalent of express advocacy. The Court said, "We reject this contention." The Court said, "The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages." This part of the Court's opinion was supported by a vote of 8-1.

As I testified previously, the political parties know how to figuratively eviscerate a candidate without using express advocacy. If you refuse to regulate electioneering communications, you will achieve nothing in the way of promoting transparency and accountability in Michigan politics. If you rationalize the approval of these bills, as written, as a first step, when will you take the meaningful step of requiring disclosure of electioneering communications? The policy formulation is easy. The politics will never be easy. Special interests and party bosses won't favor meaningful disclosure next week, or next year, any more than they do today.

This is not a question of Republicans against Democrats. This a question of special interests' desire for anonymity in political spending pitted against citizens' rights to know about that spending. The old political shell game pitted against transparency. This is your time to be counted. Whose side are you on? You can do a great good for the citizens of this state without spending a nickel of taxpayer money. Why wouldn't you?